

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LUIS CARDENAS-ORNELAS,

Case No. 3:17-cv-00461-MMD-CLB

Petitioner,

ORDER

v.

RENEE BAKER, *et al.*,

Respondents.

This habeas matter is before the Court on Petitioner Luis Cardenas-Ornelas's Declaration re: Unable to Communicate with Counsel. (ECF No. 74.)

The Court appointed David Neidert, Esq. to represent Cardenas-Ornelas in December 2017. (ECF No. 10.) Since then, Cardenas-Ornelas has filed numerous *pro se* letters/motions stating that he could not get in touch with Neidert despite letters and phone calls, or had not received copies of filings. (ECF Nos. 25, 27, 31, 50, 57, 58, 70, 71, 74.) However, the Court has found no indication of a conflict between Neidert and Cardenas-Ornelas, or that Neidert was unable to adequately represent Cardenas-Ornelas. (See, e.g., ECF Nos. 28, 32, 33, 59, 60.)

On October 8, 2020, Respondents filed an answer (ECF No. 69) to Cardenas-Ornelas's Amended Petition (ECF No. 11). Accordingly, any reply was due by November 9, 2020.¹ (See ECF No. 56.) No reply was filed, and the deadline expired without request for extension.

In recent letters (ECF Nos. 70, 71), Cardenas-Ornelas stated that he had not heard from Neidert since July 2020, despite mailing him letters, and prison restrictions prevented

¹Under Rule 5(e) of the Rules Governing Section 2254 Cases in the United States District Courts, a "petitioner may file a reply to the respondent's answer," but it is not required.

1 Cardenas-Ornelas from calling Neidert during business hours, Monday through Friday.

2 In its February 2021 Order (ECF No. 72), the Court informed Cardenas-Ornelas:

3 the briefing period in this case has closed, meaning that no additional filings
4 are required. The Court will evaluate the merits of Cardenas-Ornelas's
5 Amended Petition (ECF No. 11) in due course. Given the Court's heavy case
6 load and the delays caused by the COVID-19 pandemic, a written decision
7 may take several months.

8 (ECF No. 72 at 2.) Nevertheless, Neidert was instructed to respond directly to the Court
9 within 14 days by filing (1) a motion seeking leave to file an untimely reply, or (2) a notice
10 stating that a reply was not warranted. (*Id.*)

11 Neidert responded to the order informing the Court that, after reviewing the petition
12 and the Respondents' answer, he does not believe a reply is warranted in this case. (ECF
13 No. 73.)² Accordingly, the case stands as submitted awaiting a merits decision.

14 Petitioner's Declaration (ECF No. 74) asks the Court to have Neidert contact him
15 with updates and send him copies of documents filed in the case.

16 As explained in the prior order, the briefing period in this case has closed and
17 additional filings will not be accepted. That means there will be no developments in this
18 case for Neidert to communicate to Cardenas-Ornelas until the Court issues a merits
19 decision, which may take over a year to issue because of the Court's large case load.
20 Neidert will inform Cardenas-Ornelas once a merits decision is entered or move for
21 withdrawal and appointment of new counsel if the closing of his practice progresses before
22 a merits decision is entered. Further letters or declarations to the Court repeating this
23 complaint will be disregarded.

24 DATED THIS 16th Day of March 2021.



25 MIRANDA M. DU
26 CHIEF UNITED STATES DISTRICT JUDGE

27 ²Neidert states that he is "in the process of closing his private practice" and will file
28 a motion to withdraw "in the near future, so that counsel can be appointed to represent
Mr. Cardenas-Ornelas in future proceedings." (ECF No. 73 at 1.)